



Simple. Smart. Green.

OLD BUSINESS



## STAFF REPORT

---

**To:** SBWMA Board Members  
**From:** Kevin McCarthy, Executive Director  
Marshall Moran, Finance Manager  
**Date:** May 23, 2013 Board of Director's Meeting  
**Subject:** Resolution Approving Modifications to Unrestricted Cash Reserve Policy

---

### Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2013-11 attached hereto authorizing the following action:

Approving Modifications to Unrestricted Cash Reserve Policy

### Analysis

Staff has prepared a revised Cash Reserve Policy (Policy) as shown in **Exhibit A**. The revised Policy reflects feedback from the Board at the April 25, 2013 Board meeting and subsequent discussions with the Executive Committee.

The revised Policy reflects key changes to the existing policy (see **Attachment A**) as follows:

- Maintains two current reserve accounts (Rate Stabilization Reserve and Equipment Replacement Reserve) and replaces the existing Operating Reserve with an Emergency Reserve Account.
- Changes the priority order of the accounts so the Rate Stabilization Reserve is first in priority followed by the Emergency Reserve.
- The Equipment Replacement Reserve is a sinking fund that is funded and then drawn down as monies are needed for major capital repairs, and eventually for partial replacement of the single stream processing system.
- Exclude certain operation expenses (i.e., Shoreway buyback payments to customers and door to door HHW collection expenses) in the calculation of the fund levels for each account (i.e., up to maximum of 10% of Operating Expenses) for the Rate Stabilization Reserve and the new Emergency Reserve.
- Defines specific uses of the Reserve accounts. For example, the Rate Stabilization Reserve is available to "minimize Transfer Station rate increases resulting from significant one-time revenue shortfalls (e.g., commodity price decreases, loss of tipping fee revenues due to short or long-term closure of the Shoreway facility, etc.)."

The Emergency Reserve is to address limited capital needs or significant one-time increases in Shoreway operating expenses associated with "damage by natural disasters, acts of war or terrorism, or other community emergency scenarios that are not covered by existing insurance policies." Notably, we currently do not have coverage for damage from a seismic event, flood damage, and damage caused by an act of terrorism. Seismic coverage is reviewed annually but has been declined due to the high cost (i.e., last quote was \$450,000 per year with a 10 percent deductible). We do maintain coverage for fire; natural gas explosion; a plane crashing into our property; and weather related damage from wind, lightning, or a severe storm.

The Equipment Replacement Reserve has been redefined to cover expected equipment replacement costs after the assumed 12-year depreciable life of the single stream processing equipment installed in 2011 plus any

“significant one-time equipment repair (wear parts) costs not covered in our Shoreway capital budget.” Per the Operations Agreement with SBR, the SBWMA is responsible for any repair expenses to stationary equipment when the repair for a single item exceeds \$10,000; our FY13 budget has allocated \$40,000 for such expenses but said expenses could spike up in future years as the equipment ages. Staff is currently working with the BHS, the original equipment manufacturer, to forecast such future expense spikes.

Staff believes the draft revised policy accomplishes the goal of more clearly defining the reserve accounts as minimal definition exists in the current Policy. As for the fund levels, staff is recommending changes that will reduce the required fund balance for the Rate Stabilization fund while still maintaining sufficient funds to address significant drops in commodity revenues; the most likely scenario that would require use of these funds. The best example of when we last experienced a significant drop in commodity revenue was in the fall of 2008. This drop resulted in a \$3.56 million drop in commodity revenue during FY09. We made a revenue transfer of \$1.7 million in FY09 and a \$3 million transfer for calendar year 2009 to primarily address this shortfall.

The proposed changes also incorporate feedback from staff at other solid waste JPAs per a review of their cash reserve policies (see **Attachment B** for a summary of their policies).

### **Background**

At the June 28, 2012 Board meeting staff was given direction to form an Adhoc Subcommittee to assist staff with reviewing the current cash reserve policy with specific direction to look at the purpose of the reserve categories. A related issue would be to evaluate the reserve levels. The current reserve policy as adopted on October 22, 2009 is shown in **Attachment A**.

Staff requested such a review of the current policy in light of SBWMA achieving lower cash reserve balances than in the Bond Proforma projections, desire to minimize future tipping fee increases, and potential need for additional capital for replacement of the underground fuel tanks and construction of a new fuel island or to fund other Board designated priorities.

An Adhoc Subcommittee was formed initially consisting of Jesus Nava, City of Burlingame, Edna Masbad, Town of Hillsborough, and Rebecca Fotu, City of Menlo Park. The Subcommittee didn't convene its first meeting until February 2013 due to delays in the adoption of the FY13 budget and other staff commitments during the fall related to management of the solid waste rate setting process. At that time, Jesus Nava was no longer serving as a Board Member. Rebecca Fotu is also not currently available to participate. We have received good, extensive feedback from Board Member Masbad.

The direction from the February 2013 meeting was to further define the specific reserve accounts and uses of funds with documentation on risk factors or scenarios that would require use of the funds. Staff was also directed to review cash reserve policies in place at similar agencies.

### **Fiscal Impact**

Approval of this modified reserve policy will result in an overall reduction in our required designated reserve fund balances given the change in how we calculate operating expenses (i.e., excluding Shoreway buyback payments to customers and door to door HHW collection expenses). These two expenses total approximately \$1 million so the two funds are each reduced by 10% of the \$1 million for a combined reduction of approx. \$200,000.

A related item was to review the replacement cost of the MRF single stream equipment. It was determined that not all of the original MRF equipment would need to be replaced. The total estimated replacement cost was reduced from \$12.3 million to \$4.3 million. This reduces the budgeted FY13 Equipment Replacement Reserve

balance by \$1.3 million based on two and a half years into the twelve year life cycle. The remaining savings will be realized over the remaining 9.5 years. This is not a policy issue but it does affect the reserve balances.

The Table below reflects the two changes discussed above to the FY13 Budgeted Reserve balances: changing the operating expense used to calculate the reserve (\$200,000) and the reduction in the MRF equipment replacement cost (\$1.3 million). Because the total reserve was underfunded by \$2.9 million, the total reserve balance of \$9.4 million does not change. But the underfunded amount has been reduced to \$1.4 million.

Adopted FY13 Reserve Balances (Projected Year End Balance 6/30/13)					
Current Policy	Approved		Proposed Revised Policy		
Reserve Category	FY 2013 Budget	Underfunded	Reserve Category	FY 2013 Budget	Change
Operating Reserve (up to max. of 10% of Ops. Expense)	\$3,823,860	\$0	Rate Stabilization (up to max. of 10% of Ops. Expense)**	\$3,723,270	\$2,844,296
Rate Stabilization (up to max. of 10% of Ops. Expense)	\$878,974	(\$2,944,886)	Emergency Reserve (up to max. of 10% of Ops. Expense)***	\$2,302,367	(\$1,521,493)
Equipment Replacement (12 year amortization)	\$1,799,028	\$0	Equipment Replacement (12 year amortization)****	\$476,225	(\$1,322,803)
Undesignated	\$0		Undesignated	\$0	\$0
<b>Total Unrestricted General Reserves</b>	<b>\$6,501,862</b>	<b>(\$2,944,886)</b>	<b>Total Unrestricted General Reserves</b>	<b>\$6,501,862</b>	<b>\$0</b>
Master Plan Internal Spending	\$0		Master Plan Internal Spending	\$0	\$0
Bond Principal Payment Fund	\$958,333		Bond Principal Payment Fund	\$958,333	\$0
Burlingame Bond Repayment Fund*	\$1,945,946		Burlingame Bond Repayment Fund*	\$1,945,946	\$0
<b>Total General Reserves</b>	<b>\$9,406,141</b>	<b>(\$2,944,886)</b>		<b>\$9,406,141</b>	<b>\$0</b>
<b>Total Operating Expense</b>	<b>\$38,238,600</b>			<b>\$37,232,700</b>	<b>(\$1,005,900)</b>
<b>Notes</b>					
* Not a dedicated reserve account per our cash reserve policy.					
** Rate Stabilization Reserve increases \$2.8 million under Revised Policy as it will have the first priority of funding.					
*** Emergency Reserve replaces the Operating Reserve. Fund balance has decreased \$1.5 million vs. Ops. Reserve as it is now the second priority.					
**** Equipment Replacement Reserve decreased \$1.3 million due to reduction in capital replacement cost by \$7.9 million.					
NET RESULT: The amount below our maximum fund levels has improved by \$1.5 million under the Revised Policy.					

Actual fund balances for the current fiscal year and projected for the next fiscal year is addressed in the staff report for agenda item 6A.

**Attachments:**

- Resolution 2013 -11
- Exhibit A – Revised Cash Reserve Policy
- Attachment A – Current Cash Reserve Policy
- Attachment B - Summary of Other Solid Waste JPA Cash Reserve Policies



# RESOLUTION NO. 2013-11

## RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING MODIFICATIONS TO UNRESTRICTED CASH RESERVE POLICY

**WHEREAS**, the SBWMA Board of Directors (the Board) approved an Unrestricted Cash Reserve Policy on October 22, 2009 (the Policy); and

**WHEREAS**, the Board reviewed a draft revised Policy at its April 25, 2013 Board meeting; and

**WHEREAS**, a revised Policy will provide for long term prudent reserves to meet SBWMA future needs.

**NOW, THEREFORE BE IT RESOLVED** that the South Bayside Waste Management Authority hereby approves the modifications to the unrestricted cash reserve policy as shown in **Exhibit A**.

**PASSED AND ADOPTED** by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 23rd day of May, 2013, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Atherton					Menlo Park				
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist.				

I HEREBY CERTIFY that the foregoing Resolution No. 2013- 11 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on May 23, 2013.

ATTEST:

\_\_\_\_\_  
John Doughty, Chairperson of SBWMA

\_\_\_\_\_  
Cyndi Urman, Board Secretary

## EXHIBIT A

### Revised Reserve Policy

After meeting all debt service obligations of the SBWMA, the following designated reserve accounts shall be funded:

**Rate Stabilization Reserve Account** of up to a maximum of ten (10%) percent of budgeted operating expenses, exclusive of pass through expenses that are 100% offset by revenue from the same sources (e.g., Shoreway buyback payments to customers and door to door HHW collection expenses). These funds are available to help minimize Transfer Station rate increases resulting from significant one-time revenue shortfalls (e.g., commodity price decreases, loss of tipping fee revenues due to short or long-term closure of the Shoreway facility, etc.).

**Emergency Reserve Account** of up to a maximum of ten (10%) percent of budgeted operating expenses, exclusive of pass through expenses that are 100% offset by revenue from the same sources (e.g., Shoreway buyback payments to customers and door to door HHW collection expenses). This reserve account shall be funded only after the Rate Stabilization Reserve is funded up to the maximum level.

This fund is available to make limited capital repairs and reconstruct the Shoreway facility buildings and infrastructure that may be damaged by natural disasters, acts of war or terrorism, or other community emergency scenarios that are not covered by existing insurance policies. Such capital expenses would be those that could not be funded through an existing capital budget or those not reimbursable through insurance coverage. This fund is also available to cover significant one-time increases in operating expenditures associated with above said scenarios.

**Equipment Replacement Reserve Account** for a 12 year cost replacement schedule, inclusive of an annual CPI adjustment, for the Shoreway MRF single stream processing equipment. This reserve would also be available to fund any significant one-time unanticipated equipment repair (wear parts) costs not covered in our Shoreway capital budget.

Fund levels will be approved each year as part of the adoption of the fiscal year budget. During the budget process, projected net cash flow, reserve balances, and debt covenants are considered when budgeting Shoreway tip fees. Excess cash flow is minimized by adjusting tip fees to cover operating expenses and fund reserve balances.

It is important to note that the first two funds are basically static funds with minimal annual changes which are based on fluctuations in the annual operating budget. Ten percent is not added each year – this is the fixed limit. The third fund is a cumulative fund as cash is added each year to reach the total amount needed at the end of the twelve year replacement period.

If after all reserve levels are funded up to their maximum levels and tip fees are budgeted, surplus cash may be available. The adopted budget will include specific guidance on the use of such surplus cash with a goal of utilizing the monies for one-time expenditures, non-recurring costs, or funding an undesignated reserve account.

## ATTACHMENT A

### Current Reserve Policy (adopted 10/22/09)

After meeting all debt service obligations of the SBWMA the following reserve accounts shall be funded in the following order of priority:

1. Operation Reserve funded up to a maximum of ten (10%) percent of budgeted operating expenses.
2. Rate Stabilization Reserve funded up to a maximum of ten (10%) percent of budgeted operating expenses.
3. Equipment Replacement Reserve funded per a 12 year cost replacement schedule for the new MRF single stream processing equipment.
4. Unallocated Cash Reserve may be funded only after the reserve maximums are met in the above three reserve fund from any surplus cash.

## ATTACHMENT B

### Summary of Other Reserve Policies

#### Sunnyvale SMaRT Station

1. Equipment replacement reserve based on replacement life of equipment plus CPI.
2. Don't have a specific operations reserve. The City of Sunnyvale maintains its own "Contingency Reserve" within its Solid Waste Fund. The reserve is set at **10% of operations expenses** (i.e., their franchised haulers costs, disposal and processing costs and landfill closure costs).

#### Monterey Regional Waste Management District

1. **20% of cash operating expenses** to address contingencies for unexpected expenses. The district runs all operations including a landfill, processing operations, HHW, etc.
2. Rae stabilization/Unfunded Mandates fund set at **\$200,000**.
3. Facility Plan/Capital Outlay.

#### Salinas Valley Solid Waste Authority

1. Operating reserve at **15% of current year operating expenditures** to provide sufficient reserves for emergencies, non-recurring expenditures, revenue shortfalls or major capital purchases that can't be accommodated through any current year savings.
2. Undesignated fund balance of **10% of current year operating expenditures (maintenance and operation expenditures only)**. If after annual audit, the undesignated fund balance exceeds 10%, the excess will be allocated to reserves in the following priority:
  - i. Insurance retention reserves
  - ii. Operating reserve
  - iii. Capital projects reserve
3. Capital projects reserve for the purpose of funding future capital projects. After fulfilling all insurance and operating reserve requirements and undesignated funds above 10% will be allocated to the Capital projects reserve.



Simple. Smart. Green.

## STAFF REPORT

---

To: SBWMA Board Members  
From: Cliff Feldman, Recycling Programs Manager  
Kevin McCarthy, Executive Director  
Date: May 23, 2013 Board of Director's Meeting  
Subject: Discussion on Roles and Responsibilities for Collection Services Franchise Agreement Contract Administration

---

### Recommendation

This staff report is for discussion purposes only and no formal action is requested of the Board of Directors.

### Analysis

At the March 28, 2013 Board meeting, staff made a presentation on agenda item 6D on this topic to commence a discussion between the Board and SBWMA staff to gain further clarity around roles and responsibilities for Franchise Agreement contract administration. This is an important and timely discussion as we prepare for the next fiscal year budget and also to address some confusion or expectation issues that currently exist around who does what with regard to Franchise Agreement administration.

SBWMA staff provides a range of contract administration services to support the Member Agencies with their Collection Services Franchise Agreements with Recology San Mateo County. Some of this support is clearly defined in the Franchised Agreement(s) (e.g., annual compensation application/rate review work, public education requirements, etc.) while other tasks are not clearly spelled out in terms of whether the Member Agency and/or JPA staff are responsible. Other responsibilities are in transition as a set of administrative changes to the Franchise Agreement are under consideration.

It is important to note that since the 12 separate Franchise Agreements went into effect on January 1, 2011, SBWMA staff has taken on greater contract administration responsibility, as compared to the previous Franchise Agreements with Allied Waste/Republic Services, and has done so with fewer staff resources. We now fully manage the rate review process with existing staff, and manage all aspects of Public Education.

In addition, many limitations of the previous Franchise Agreement(s) with Allied Waste/Republic Services regarding performance standards, reporting and service delivery were addressed in the current Franchise Agreement(s) resulting in a significantly more robust contract requiring increased attention and administration.

**Attachment A** provides a summary of current contract administration services provided by SBWMA staff and how such services relate to Franchise Agreement provisions. A description of the area of contract administration, the contractual reference and whether or not the SBWMA's role or responsibility is denoted in the Franchise Agreement(s) is provided. The general areas of contract administration detailed in Table 1 of **Attachment A** include:

- Contract Interpretation (and Negotiation)
- Customer Service Delivery
- Financial Oversight

- Customer Billing
- Reporting
- Public Education and Outreach
- Commercial Recycling Outreach Program
- Conducting Performance Hearing
- Cooperation with Facility Operations
- Insurance and Bond Documents
- Review of Proposals
- Quarterly Contamination Monitoring (now bi-quarterly)

It's important to note that this discussion does not apply to the Shoreway Operations Agreement as clearly SBWMA staff has full responsibility to administer that contract.

Per feedback from Board members, **Attachment A** has been revised to provide more detail on the specific roles and responsibilities of each Member Agency with regard to Franchise Agreement contract administration. A separate table which provides this detail is included as Table 2.

### **Background**

On March 27, 2008 the Board adopted a resolution regarding management of certain aspects of collection Franchise Agreements as discussed during the board retreat on February 22, 2008. It was noted during the Board retreat that SBWMA staff currently performs, on behalf of its Member Agencies, contract management functions specific to the individual Franchise Agreements for solid waste, recyclable materials and plant materials collection services with Allied Waste/Republic Services. Key contract management activities that were listed included, but were not limited to:

1. Annual Rate review
2. Annual Performance Review
3. Review of Quarterly Reports
4. Liquidated Damages Monitoring and Reporting

While there are a number of explicit JPA powers delegated to the SBWMA by the Member Agencies, the activities above were not expressly identified. The adopted resolution reaffirmed the SBWMA's role in delivering the contract management services noted above.

### **Fiscal Impact**

There is no fiscal impact associated with this discussion. Contract management and support services are covered in existing budget line items in the FY12/13 budget. Our current FY12/13 budget includes two full-time staff dedicated to supporting Franchise Agreement contract administration and related programs as compared to three in previous fiscal years.

### **Attachment:**

**Attachment A** – Summary of Franchise Agreement Administration Activities

## Attachment A

### SUMMARY OF FRANCHISE AGREEMENT CONTRACT ADMINISTRATION ACTIVITIES

(EXCLUDES CONTRACT ADMINISTRATION OF THE SHOREWAY OPERATIONS AGREEMENT WHICH THE SBWMA IS 100% RESPONSIBLE FOR, INCLUDING BILLING RECOLOGY FOR TONS DELIVERED TO SHOREWAY AND MANAGEMENT OF ALL DISPOSAL AND PROCESSING VENDORS)

Table 1

<u>Area of Contract Administration</u>	<u>Summary Description</u>	<u>Contractual Reference</u>	<u>Specific Responsibility Denoted for SBWMA</u>
Contract Interpretation (and Negotiation)	<ul style="list-style-type: none"> <li>• With a complex, detailed and service oriented contract of this type, various issues arise which require interpretation and dialogue to potentially avoid protracted disputes and/or litigation.</li> </ul> <p><b>SBWMA role:</b> Regularly provides guidance to Member Agency staff and Recology as the SBWMA is viewed by the company as the primary point of contact to administer the contract and resolve issues efficiently. The alternative for Recology would be to bring issues directly to all twelve Member Agencies. This alternative approach would likely be burdensome to the Member Agencies and Recology as the inherent back and forth that would likely transpire would be very time consuming and possibly result in inconsistent results across Member Agencies. Examples of circumstances whereby the SBWMA provided guidance and clarification of the contractual obligations include: providing Backyard Service for all three carts; remitting all revenue directly to Agencies for the 1<sup>st</sup> 20% of Backyard Service customers; reviewing the timing issues of changing the cost adjustment of CBA wages to an indices based cost adjustment upon expiration or amendment of the CBA's; negotiating the relief of Member Agencies from accruing interest for setting rates late after January 1, 2011 for first year. Staff has also taken the lead with the recent contract negotiations to deliver cost savings to the Member Agencies and prior administrative changes which improved the services provided.</p>	Various	<ul style="list-style-type: none"> <li>• No</li> </ul>

<u>Area of Contract Administration</u>	<u>Summary Description</u>	<u>Contractual Reference</u>	<u>Specific Responsibility Denoted for SBWMA</u>
Customer Service Delivery	<ul style="list-style-type: none"> <li>The Franchise Agreement(s) require high standards of customer service and contractor performance.</li> </ul> <p><b>SBWMA role:</b> Staff has maintained the Customer Service Resolution Tracking System since 2007 which is a stand-alone customer management and contractor work order processing system used exclusively by Member Agencies; through publicizing the RethinkWaste website and phone number, numerous direct customer interactions are handled by staff; and staff responds directly to inquiries from the Board and their respective staff. In 2012, Staff conducted a detailed audit of the company's performance in 2011 which led to numerous improvements in service delivery, customer service functions, and data compilation and reporting.</p>	Articles 5 and 7	<ul style="list-style-type: none"> <li>No</li> </ul>
Financial Oversight	<ul style="list-style-type: none"> <li>Review of Annual Compensation Application</li> </ul> <p><b>SBWMA role:</b> While prescribed with a limited review of the Application for "accuracy and completeness," a very detailed analysis is actually conducted including an analysis of Pass-Through Costs so that the total collection rate adjustment can be provided when the Board considers approving the company's compensation at the September meeting.</p> <ul style="list-style-type: none"> <li>Review of Annual Revenue Reconciliation</li> </ul> <p><b>SBWMA role:</b> Staff's review of the annual compensation application includes verification of the data presented, confirming the tonnage and cost allocation processes are sound, verifying Member Agencies are paid the appropriate Franchise and other Fees. Staff also manages an annual Financial Audit which includes auditing the Revenue Reconciliation and data pertinent to the annual Compensation Application. For example, the balance owed to/from Recology by Member Agency and interest is verified. Staff has also recently reorganized and rewritten the company's 2013 Application and will work closely with the company to come to agreement on the organization, format and content of the 2014 Application with the goal of developing a more user friendly and easier to understand Application for next year which is due this June 14, 2013.</p>	Article 11	<ul style="list-style-type: none"> <li>Yes</li> <li>No</li> </ul>

<u>Area of Contract Administration</u>	<u>Summary Description</u>	<u>Contractual Reference</u>	<u>Specific Responsibility Denoted for SBWMA</u>
Customer Billing	<ul style="list-style-type: none"> <li>• Billing Service - Recology is required to provide billing services to 10 of 12 Member Agencies.</li> <li>• Confirmation of Customer Account Data</li> </ul> <p><b>SBWMA role:</b> A limited review of Recology's customer billing is done to verify that correct rates are charged and accounts are in the correct jurisdiction.</p>	Article 7	<ul style="list-style-type: none"> <li>• No</li> <li>• No</li> </ul>
Reporting	<ul style="list-style-type: none"> <li>• Review of Monthly, Quarterly and Annual Reports</li> </ul> <p><b>SBWMA role:</b> Staff has worked with Recology to develop the content and format for reports; reviews the reports and conducts a detailed audit of the Annual Report. Since Recology self-reports many of the metrics used to calculate the reported incentive/disincentive and liquidated damages payments due to/from the Member Agencies, Staff's review and analysis of the Annual Report is specifically focused on the calculations and the source data used for this reporting. For example, this includes analyzing the statistics derived from the customer service call center and the allocation of tonnage.</p>	Article 9	<ul style="list-style-type: none"> <li>• No</li> </ul>
Public Education and Outreach	<ul style="list-style-type: none"> <li>• Effective public education and outreach is critical in conveying to customers the scope of services, participation requirements and performance standards.</li> </ul> <p><b>SBWMA role:</b> Staff was primarily responsible for the critical public education activities required during the roll-out of new services and in many activities since; per recent changes to the Franchise Agreement(s), staff has now formally been charged with oversight of all public education and outreach activities, including those specified as Recology's public education requirements. This includes the Annual Public Education Plan and the bill inserts.</p>	Sections 7.02 and 7.03	<ul style="list-style-type: none"> <li>• Yes</li> </ul>

<u>Area of Contract Administration</u>	<u>Summary Description</u>	<u>Contractual Reference</u>	<u>Specific Responsibility Denoted for SBWMA</u>
Commercial Recycling Outreach Program	<ul style="list-style-type: none"> <li>The commercial recycling outreach program staffing consists of 8 recycling sales representatives and a manager. This staff of nine is required to solely focus on Commercial, Multi-Family and Agency Facility recycling activities.</li> </ul> <p><b>SBWMA role:</b> Staff continues to work with the company to provide needed reports and analysis to ensure this program delivers good value to the Member Agencies.</p>	Sections 7.04 and 7.05	<ul style="list-style-type: none"> <li>No</li> </ul>
Conducting Performance Hearing	<ul style="list-style-type: none"> <li>The Franchise Agreement(s) provide the opportunity for Member Agencies to annually conduct a detailed performance review of the company.</li> </ul> <p><b>SBWMA role:</b> Staff shall assist the Member Agencies with conducting this review upon request. It is anticipated this review would take place in April or May of any given year after the company's Annual Report is released on February 15. The contract prescribes the process and the next possible window to conduct a performance review would be early 2014.</p>	Section 8.11	<ul style="list-style-type: none"> <li>Yes</li> </ul>
Cooperation with Facility Operations	<ul style="list-style-type: none"> <li>Effective communication and coordination of both the collection services and facility operations contractors is critical to ensure the cost-effective functionality of the Shoreway Environmental Center.</li> </ul> <p><b>SBWMA role:</b> Staff works closely with both companies to ensure disputes are resolved and services are provided uninterrupted.</p>	Section 8.09	<ul style="list-style-type: none"> <li>Yes</li> </ul>
Insurance, Bond Documents	<ul style="list-style-type: none"> <li>The Franchise Agreement(s) require the company to maintain and submit proof of insurance coverage and a bi-annual performance bond.</li> </ul> <p><b>SBWMA role:</b> Recology has provided the insurance and performance bond documents to Staff in the past and are then requested to ensure these are distributed accordingly.</p>	Article 13	<ul style="list-style-type: none"> <li>No</li> </ul>
Review of Proposals	<ul style="list-style-type: none"> <li>Section 15.12 is related to the Agency's rights to make changes to services/service levels. But historically, proposals for changes/new services have been first reviewed and analyzed by the SBWMA with a recommendation to the Member Agencies. While this is not a "denoted" responsibility, it is one that the SBWMA takes on.</li> </ul>	Section 15.12	<ul style="list-style-type: none"> <li>No</li> </ul>

Area of <u>Contract Administration</u>	<u>Summary Description</u>	<u>Contractual Reference</u>	Specific Responsibility Denoted for <u>SBWMA</u>
"Quarterly" Contamination Monitoring (now Bi-Annual)	<ul style="list-style-type: none"> <li>The Franchise Agreement(s) require the company to ensure that the content of the recyclable materials collected and delivered to Shoreway comply with prescribed thresholds of contamination. The intent of this requirement is to achieve high levels of diversion and to mitigate extra processing costs at Shoreway. The SBWMA is paid directly for the prescribed disincentive payments applied to contamination levels exceeding the thresholds. This disincentive payment is to offset the unbudgeted extra disposal expense associated with excessive contamination.</li> </ul> <p><b>SBWMA role:</b> Staff is responsible for conducting a quarterly (now bi-annual) contamination monitoring event to measure the amount of contamination present in five streams of materials collected by Recology (i.e., Commercial and Multi-Family Single-Stream Recycling, Commercial/Multi-Family Compost, Commercial/Multi-Family Plant Materials, Residential Single-Stream Recycling and Residential Compost). Staff conducted a competitive procurement for a contractor to conduct the quarterly contamination monitoring and funds were budgeted in the current fiscal year to conduct this monitoring twice.</p>	Section 6.02	<ul style="list-style-type: none"> <li>Yes</li> </ul>

Table 2

Title of Franchise Agreement Section	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
Solid Waste, Recyclable Material and Organic Material collection service	<ul style="list-style-type: none"> <li>Determine the number and size of containers and frequency of collection service provided to Agency Facilities.</li> </ul>	5.02(D); 5.03(D); 5.04(D)
Single-Family and Multi-Family Twice Annual On-Call Curbside Bulky Item Collection Service	<ul style="list-style-type: none"> <li>If contractor notifies Agency that a multi-family customer is requesting this service in order to reduce its regular level of solid waste collection service, Agency shall review the application submitted by contractor to determine if this service should not be provided.</li> </ul>	5.05
Agency Facility Annual On-Call Collection Service	<ul style="list-style-type: none"> <li>Subscribe to this service annually which is provided at no additional cost.</li> </ul>	5.06
Confidential Document Destruction Event	<ul style="list-style-type: none"> <li>Scheduling this event.</li> </ul>	5.07
Collection for Large Venues and Events	<ul style="list-style-type: none"> <li>Request collection service at qualifying events.</li> <li>Request contractor to staff an information booth at each event.</li> <li>Receive report on tonnage of material collected and request contractor to share said report with the event organizer.</li> </ul>	5.08
Abandoned Waste Cleanup Collection Service	<ul style="list-style-type: none"> <li>Provide notification to contractor of areas to collect abandoned waste.</li> <li>If hazardous waste, household hazardous waste or sharps is requested to be cleaned up, contractor must contact Agency directly.</li> </ul>	5.09
Coats for Kids Program	<ul style="list-style-type: none"> <li>Request this this service be provided and specify locations to place collection containers.</li> </ul>	5.10
Compost Give-Away	<ul style="list-style-type: none"> <li>Request this service be provided and specify locations for delivery of compost.</li> </ul>	5.11
Fee for Service On-Call Bulky Item Collection	<ul style="list-style-type: none"> <li>Request this service be provided at specific locations.</li> </ul>	5.12
Community Drop-Off Events	<ul style="list-style-type: none"> <li>Request this service be provided at specific locations.</li> </ul>	5.13
Week-Long Agency-Wide Bulky Items Collection Service Event	<ul style="list-style-type: none"> <li>Request this service be provided with 4 months lead time.</li> </ul>	5.14
Processing of Other Materials	<ul style="list-style-type: none"> <li>Request contractor, with approval from SBWMA, to be responsible for or arrange for processing of bulky items, appliances and specialty recyclable/reusable materials.</li> </ul>	6.04
Customer Billing	<ul style="list-style-type: none"> <li>Agency can request more frequent billing.</li> <li>Approve the bill format used by the company.</li> <li>Provide 1 day notice to access billing records (held for 5 years by the company).</li> <li>Establish the rates billed by contractor.</li> <li>Direct contractor to conduct billing review for residential commercial and multi-family</li> </ul>	7.01

Title of Franchise Agreement <u>Section</u>	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
	<p>customers more frequently than the prescribed once every three years.</p> <ul style="list-style-type: none"> <li>• Receive the company's report on review of its billings within 45 days after the end of each calendar year.</li> <li>• Request the company to conduct periodic billing reviews.</li> </ul>	
Customer Service	<ul style="list-style-type: none"> <li>• Request monthly meeting to discuss compliance with the customer service standards.</li> <li>• Submit work orders directly to contractor electronically through the company's web based software.</li> <li>• Provide information to company to facilitate the preprogrammed transfer of calls directly to Agency.</li> </ul>	7.02
Public Education and Promotion	<ul style="list-style-type: none"> <li>• Collaborate on public education activities.</li> <li>• Receive, review and approve the annual public education plan. (This has been changed and the SBWMA now develops this plan for approval by the Board.)</li> <li>• Review and provide input on public education materials. (The ad hoc Public Education Subcommittee provides this oversight.)</li> <li>• Provide a broad focus of public education to all service sectors; prepare and distribute a quarterly newsletter and MFD toolkit; purchase deskside and other containers for commercial customers, purchase buddy bags for MFD customers; provide an electronic newsletter to commercial and MFD customers; provide outreach materials to schools; request the company to provide household battery and cell phone bags for collection services.</li> <li>• Request contractor to promote its services using Agency's email distribution list.</li> <li>• Approve the annual service notice.</li> </ul>	7.03
Commercial Recycling Promotion Program	<ul style="list-style-type: none"> <li>• Direct contractor to participate in and promote diversion at community events.</li> <li>• Work with contractor to develop standard specification for enclosures.</li> <li>• Submit plans for land use and property development for contractors review and request review be completed within the required 10 days.</li> <li>• Direct contractor to assist with promoting Agency's mandatory commercial recycling program.</li> </ul>	7.04
Waste Generation/Characterization Studies	<ul style="list-style-type: none"> <li>• Request contractor to conduct visual audits at Shoreway of up to 10% of the number of accounts in each service sector.</li> </ul>	7.06
Program Evaluation	<ul style="list-style-type: none"> <li>• Require contractor to periodically conduct up to 5 additional days of route audits of residential and commercial customers at no additional cost to Agency.</li> </ul>	7.07
Provision of Emergency Services	<ul style="list-style-type: none"> <li>• Require contractor to provide emergency services in the event of major accidents, disruptions and natural calamities.</li> </ul>	7.08

Title of Franchise Agreement Section	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
Carbon Footprint Measuring	<ul style="list-style-type: none"> <li>• Receive contractor's annual climate action report.</li> </ul>	7.10
Environmental Management Program	<ul style="list-style-type: none"> <li>• Request contractor to provide the list of topics discussed at its bi-monthly environmental team roundtable meetings.</li> <li>• Request contractor to provide within 30 days copies of its internal environmental compliance audits, third-party audits and disposition of corrective actions.</li> </ul>	7.11
Collection Hours and Schedules	<ul style="list-style-type: none"> <li>• Restrict or require modifications to hours of collection for commercial and Agency Facilities.</li> <li>• Require contractor to comply with Agency's local noise ordinance.</li> <li>• Approve the contractor's route schedules and routing maps.</li> <li>• Request contractor to annually review its operations plan.</li> <li>• Direct contractor to revise its operations plan if it inadequately addresses unsatisfactory performance.</li> <li>• Review contractor's contingency plan that ensures uninterrupted service during service breakdowns, natural disasters or other emergencies.</li> </ul>	8.01
Collection Standards	<ul style="list-style-type: none"> <li>• Provide approval to contractor to use its trucks which collect from SBWMA jurisdictions to also collect from non-SBWMA jurisdictions.</li> <li>• Confirm contractor is using an adequate number of non-collection notices before allowing the contractor to cease collection service of recyclable and organic materials.</li> <li>• Receive monthly report from contractor on use of non-collection notices.</li> <li>• Provide direction to contractor regarding termination or reinstatement of service based on numerous non-collection notices issued to a customer.</li> <li>• Determine if the complaints received regarding contractor's overage bag distribution are sufficient to direct contractor to modify its overage bag program.</li> <li>• Refer complaints about damage to private property to contractor.</li> <li>• Upon request, authorize contractor to transfer loads from one vehicle to another on public streets.</li> <li>• Receive reports of instances where complaints regarding spills were not contractor's fault.</li> <li>• Agency shall attempt to rectify situations where contractor's efforts in attempting to stop customers from creating spills are unsuccessful.</li> <li>• Receive notice from Agency of changes to collection schedules 60 days in advance.</li> <li>• Potentially waive the 30 day requirement for contractor to request approval to implement a service change.</li> </ul>	8.02
Vehicles	<ul style="list-style-type: none"> <li>• Receive inventory list of all contractor's vehicles.</li> </ul>	8.04

Title of Franchise Agreement <u>Section</u>	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
	<ul style="list-style-type: none"> <li>• Inspect contractor's vehicles at any time to ensure compliance with vehicle cleanliness and other contractual requirements.</li> <li>• Determine if vehicles are painted satisfactorily by providing company 30 day notice to repaint at no additional cost.</li> <li>• Request vehicle safety and maintenance records.</li> <li>• Receive annually documentation of contractor's compliance with the California Vehicle Code, California Air Resources Board Waste Collection Vehicle Regulations and all other safety and local ordinances.</li> </ul>	
Containers	<ul style="list-style-type: none"> <li>• Approve the minimum allowable loading requirements for bin and drop box contents.</li> <li>• Provide agreement on the layout, content and graphics used on containers.</li> <li>• Provide contractor written approval to rent of sell carts to customers.</li> <li>• Upon early expiration or early termination of contract, potentially exercise the right to claim ownership of all containers.</li> <li>• Require contractor to remove all containers in service with 10 days.</li> </ul>	8.05
Personnel	<ul style="list-style-type: none"> <li>• Exercise right to direct the general manager to discuss unacceptable performance of management personnel.</li> <li>• If dissatisfied with general manager, discuss dissatisfaction with the group manager.</li> <li>• Exercise right to require contractor to re-assign management personnel.</li> <li>• Request contractor to provide the information sheet, training agenda and other pertinent documentation used by customer service representatives.</li> <li>• Exercise right to direct contractor to reassign an employee based on their conduct.</li> <li>• Employee uniform type, style, colors and modifications may be subject to Agency approval.</li> </ul>	8.06
Hazardous Waste Inspection and Handling	<ul style="list-style-type: none"> <li>• Direct contractor to include specific content in its non-collection notice rationale regarding refusing to collect hazardous waste.</li> </ul>	8.07
Communication and Cooperation with Agency	<ul style="list-style-type: none"> <li>• Exercise right to have monthly meetings with contractor.</li> <li>• Exercise right to observe and inspect all of contractor's operations, to enter facilities and to speak to and expect cooperation from contractor's employees.</li> <li>• Exercise right to review and copy any of contractor's operational and business records, including all electronic data.</li> <li>• Exercise right to require specific contractor personnel to accompany Agency staff on inspections.</li> </ul>	8.08
Buy-Recycled Policy	<ul style="list-style-type: none"> <li>• Request contractor to document compliance with the buy-recycled standards in the contract.</li> </ul>	8.10

Title of Franchise Agreement Section	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
Annual Performance Hearing	<ul style="list-style-type: none"> <li>Require contractor to actively participate in an annual performance hearing subject to the timing process prescribed in the contract.</li> </ul>	8.11
Record Keeping and Reporting	<ul style="list-style-type: none"> <li>Direct contractor to adjust the content, number, format and frequency of the reports required in the contract.</li> <li>Direct company to provide financial information necessary to set contractor's compensation.</li> <li>Direct company to permit review or inspection of reports, documents and records.</li> <li>Exercise right to conduct or have third parties, such as an auditor, conduct un-announced on-site inspections to review records and accounting systems.</li> <li>Exercise right to have contractor retrieve, within 10 days, any documents and information required to be maintained by contractor for the contract term plus five years.</li> </ul>	9.01
General Reporting Requirements	<ul style="list-style-type: none"> <li>Approve the format of all reports.</li> <li>Review and request changes, which shall not be unreasonably denied, to all reports.</li> <li>Require reports be provided in an electronic format for use by Agency.</li> </ul>	9.04
Quarterly Reports	<ul style="list-style-type: none"> <li>Require contractor to conduct an annual or semi-annual tonnage assessment, if multi-family dwelling tons are not tracked separately.</li> <li>Per contractor's report on non-compliance with liquidated damages, Agency shall prepare a written explanation on its determination on each incident(s)/non-performance.</li> <li>Request the quarterly reporting include additional reports.</li> </ul>	9.06
Annual Reports	<ul style="list-style-type: none"> <li>Require contractor to provide detailed account information in an electronic format suitable to Agency.</li> <li>Receive contractor's annual customer service operations plan.</li> <li>Request contractor to provide documentation relevant to the annual disclosure letter of related third party entities.</li> </ul>	9.07
Upon-Request Reporting	<ul style="list-style-type: none"> <li>Request specific report of holiday trees collected in drop boxes or at drop box sites.</li> <li>Exercise right to request additional reports if contractor is required to maintain said information.</li> </ul>	9.09
Franchise Fee and Other Fees	<ul style="list-style-type: none"> <li>Request contractor to separately identify franchise and other fees on its bills to customers.</li> <li>Adjust fees as the Agency deems necessary.</li> </ul>	10.01
Determination of Contractor's	<ul style="list-style-type: none"> <li>Receive and review annual compensation application.</li> </ul>	11.02

Title of Franchise Agreement <u>Section</u>	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
Compensation	<ul style="list-style-type: none"> <li>• Require contractor to provide additional information while reviewing its annual compensation application.</li> <li>• Provide comments to SBWMA on its compensation application review report.</li> </ul>	
Special Compensation Review	<ul style="list-style-type: none"> <li>• Exercise the right to initiate a special compensation review per prescribed criteria.</li> <li>• Exercise right to review any and all financial and operating records.</li> <li>• Review contractor's request for a special compensation review and determine the amount owed.</li> <li>• Exercise right to deny contractor's request for an increase in compensation (per a special compensation review) and provide contractor a hearing before Agency's governing body.</li> <li>• Exercise right of Agency governing body to grant some, all or none of contractor's requested increase in compensation (per a special compensation review).</li> <li>• Exercise the right to direct a change in service.</li> </ul>	11.05
Rate-Setting Process	<ul style="list-style-type: none"> <li>• Agency is solely responsible for establishing and adjusting rates charged to customers.</li> <li>• Review rates annually and adjust as necessary to generate gross revenues billed equal to approved contractor's compensation.</li> <li>• Exercise right to set rates below those recommended in the SBWMA Board approved report (subject to being charged interest for any shortfall).</li> <li>• Exercise right to change the structure of rates billed customers.</li> <li>• Receive or pay the contractor performance incentives and disincentives.</li> </ul>	11.07
Notice of Rate Adjustments	<ul style="list-style-type: none"> <li>• Require contractor to provide a complete and current list of its customer addresses.</li> </ul>	11.08
Conditions Authorizing Agency's Right to Use of Facilities and Equipment	<ul style="list-style-type: none"> <li>• Per stoppage of service that may impact the public health, safety and welfare, provide contractor notice of intent to invoke article and commence performing collection service with different personnel and take possession of contractor's vehicles and equipment.</li> </ul>	12.02
Notice to Contractor	<ul style="list-style-type: none"> <li>• Provide notice of intent to commence collection and possess contractor's vehicles and equipment.</li> </ul>	12.03
Rights and Responsibilities	<ul style="list-style-type: none"> <li>• Agency is responsible for the proper use of contractor's vehicles and equipment.</li> </ul>	12.04
Duration of Agency's Right to Possession and Use of Vehicles/Equipment	<ul style="list-style-type: none"> <li>• Possession can be retained until Agency determines contractor has demonstrated it can provide the services.</li> </ul>	12.05

Title of Franchise Agreement Section	<u>Summary Description of Agency's Responsibility</u>	<u>Contractual Reference</u>
Indemnity, Insurance, Bond Guarantee	<ul style="list-style-type: none"> <li>Receive and confirm documents such as insurance and the faithful performance bond submitted by contractor meet the contractual requirements</li> </ul>	Article 13
Alternative Security	<ul style="list-style-type: none"> <li>Agency can allow contractor to provide an amount of security (faithful performance bond) that is different than that set forth in the contract.</li> </ul>	13.04
Default and Remedies	<ul style="list-style-type: none"> <li>Terminate the agreement in the event of default.</li> </ul>	Article 14
Right to Perform; Use of Contractor Property	<ul style="list-style-type: none"> <li>If contract is suspended or terminated due to contractor default, Agency has the right to perform using contractor's property.</li> </ul>	14.04
Liquidated Damages	<ul style="list-style-type: none"> <li>In addition to self-reported information by contractor, Agency can determine the occurrence of events resulting in liquidated damages.</li> </ul>	14.07
Agency Default	<ul style="list-style-type: none"> <li>Agency is precluded from committing a material breach of the contract.</li> </ul>	14.08
Assignment	<ul style="list-style-type: none"> <li>Agency cannot unreasonably deny assignment of the contractor is specific criteria a met by contractor.</li> </ul>	15.03
Subcontracting	<ul style="list-style-type: none"> <li>Approve or deny contractor's use of subcontractors.</li> </ul>	15.04
Right of Agency to Make Changes in Services and Service Levels	<ul style="list-style-type: none"> <li>Agency can direct contractor to make changes in services provided and such changes which result in an increase of decrease in compensation shall be subject to making an equitable adjustment to contractor's compensation (per the special compensation review set forth in Article 11).</li> <li>Exercise right to terminate a program and allow a third party to provide said service if contractor is not cost-effectively achieving the program's goals and objectives.</li> </ul>	15.12
Transition to Next Service Provider	<ul style="list-style-type: none"> <li>Exercise right to require contractor to attend meetings with the next service provider to facilitate a smooth transition.</li> </ul>	15.13



---

**Agenda Item 7C**

**Discussion on SBWMA Governance**

**Discussion Item only – No Report**

---

Blank Page - No Report